IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

OP.No. 22221 of 2002(S)

OA.835/1999 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONERS:
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1. THE CHIEF OPERATIONS MANAGER,
SOUTHERN RAILWAY, HEADQUARTERS OFFICE,MADRAS-3.

2. THE ADDITIONAL DIVISIONAL RAILWAY
MANAGER, SOUTHERN RAILWAY, PALGHAT DIVISION,
PALGHAT.

2. THE ADDITIONAL DIVISIONAL RAILWAY
MANAGER, SOUTHERN RAILWAY, PALGHAT DIVISION,
PALGHAT.

3. THE SENIOR DIVISIONAL SAFETY OFFICER,
SOUTHERN RAILWAY, PALGHAT DIVISION, PALGHAT.

BY ADV. SRI.C.N.RADHAKRISHNAN

RESPONDENTS:
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1. U.NARAYANAN, S/O. RAMAN NAMBISAN,
TRAFFIC PORTER, NETRAVATHY RAILWAY STATION-B CABIN
RESIDING AT MAHAKALI PADAPPU, MANGALORE-2.

2. CENTRAL ADMINISTRATIVE TRIBUNAL,
REPRESENTED BY ITS REGISTRAR, KALOOR, ERNAKULAM.

BY ADV. SRI.T.C.GOVINDA SWAMY
SRI.K.M.ANTHRU

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 23/05/2007, THE COURT ON 07/06/2007 DELIVERED THE
FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

O. P. No 22221 of 2002

Dated: 7th June, 2007

JUDGMENT

Radhakrishnan, J.

This original petition has been preferred by the Chief Operations Manager and 2 others aggrieved by the order passed by the Central Administrative Tribunal, Ernakulam Bench in O.A. No 835 of 1999 by which the Tribunal interfered with the disciplinary proceedings initiated by the Department against the first respondent and quashed the order of penalty passed by the third petitioner reducing to the post of traffic porter.

2. Memo of charges was served on the first respondent stating that while he was on duty at “B” Cabin on 25.05.1995 he refused to exchange PS with the SM and to give slot for the reception of 505 passenger which was blocked at 17.30 hours. One P.R. Abhimanyu PF Porter on duty was sent to the Cabin by the duty Station Master and he found the first respondent in a drunken condition and not in a position to perform the duties properly. Further it was stated, by

the time alternative arrangements were made, 505 passenger suffered 45 minutes detention at Home and the DMO/ED and TI/ED arrived at URL, first respondent absconded from the Cabin during duty hours without handing over charge. It was therefore noticed that the first respondent had failed to maintain devotion to duty and had behaved in a manner quite unbecoming of a railway servant and had thus violated Rule 3.1 (ii) and (iii) of Railway Services (Conduct) Rules, 1966. It is also stated that as a responsible railway servant entrusted with train passing duties, first respondent should have been alert in his duties and should have performed his duties connected with train running punctually and properly and failed to maintain devotion to duty and behaved in a manner quite unbecoming of a railway servant and violated the Railway Services (Conduct) Rules.

3. Explanation was submitted by the first respondent to the memo of charges. Later enquiry was conducted by the enquiry officer appointed by the Department. Effective opportunity was given to the first respondent to adduce evidence. Witnesses were also examined. Before the enquiry officer, delinquent employee had stated that he was suffering from hypertension and diabetics and he

had over worked. It was under such circumstances that he could not perform his duties. Enquiry officer took statement of the first respondent and also took statements from other employees as well and came to the conclusion that first respondent had deliberately detained 505 passenger train even though he was fully aware that it was unsafe to keep the passenger train on signal. Enquiry officer had noted that the first respondent had knowingly detained the train 505 passenger for about 45 minutes causing inconvenience to railways as well as to the passengers and that the delinquent employee had absconded by the time when DMO/ED arrived by 517 passenger so as to escape from taking blood and urine. It was found that the delinquent employee was found to be in an intoxicated state and he stated that he was available in Ars. No 18A. Charges levelled against the delinquent employee were found to be proved and the report was submitted to the authorities. Enquiry report was considered by the third respondent and penalty was imposed on the delinquent employee by reverting him as SCP/Porter in the scale of Rs 775-1025. Against that order the delinquent employee preferred appeal before the first appellate authority and that was dismissed. Further revision was preferred by the delinquent employee and the

same was also rejected. Above mentioned orders were challenged before the Tribunal.

4. Tribunal in the impugned order stated that the articles of charge had two limbs; one is that the employee refused to exchange the private number with the Station Master and the other is that the employee absconded the cabin during the duty hours without handing over charge. Tribunal noticed that the employee was unable to discharge the work since he was sick and that he had gone to the office of the Station Master to submit sick memo. The Tribunal also came to the conclusion that the records showed failure of the employee to exchange PN was on account of his health condition and that he had ultimately reported sick before the authorities. Holding so the Tribunal held that the finding of the enquiry officer that the employee was guilty of the charges was perverse and set aside the enquiry report as well as the orders passed by the authorities.

5. We have heard counsel on either side. We have gone through the records. Tribunal has noticed that there are two limbs in the charge levelled against the delinquent employee which the Tribunal has quoted in paragraph 4 of the order. In our view the

Tribunal has misread and misinterpreted the charges levelled against the delinquent employee. Further Tribunal has wrongly cast the burden on the Department to show that the delinquent employee could not discharge the duties because he was sick. On the other hand evidence given by the witnesses would show that the delinquent employee was in an intoxicating state and he even used some vulgar words. Enquiry officer has clearly found that the Station Master had deputed one person to the cabin of the delinquent employee. It was found that the delinquent employee was not in a position to perform his duties. No acceptable evidence was adduced by the delinquent to show that he was sick at the relevant point of time. Enquiry report would show that the delinquent employee was in an intoxicated mood and was not able to discharge his duties. In our view the enquiry was properly conducted. Tribunal in our view has committed an error in reappreciating the evidence adduced before the enquiry officer without any cogent reason. Tribunal has wrongly cast the burden on the Department to show that the delinquent employee was sick. On the other hand it is the case of the Department that the delinquent employee was not sick and that he had avoided medical examination

by the doctor. Responsible employee would have acted on the instruction given by the Station Master. Due to the misconduct of the delinquent employee 505 passenger train had to be detained causing considerable inconvenience to the passengers. Tribunal has committed an error in interfering with the disciplinary action against the first respondent. Original petition is therefore allowed. Order passed by the Tribunal is set aside.

Sd/-

K.S. RADHAKRISHNAN
Judge

Sd/-
ANTONY DOMINIC
Judge

07/06/2007
en

[true copy]

APPENDIX

Petitioner's exhibits:

Ext.P1 - True copy of memo of charges dated 10.7.1996 issued by the Sr DSO
Ext.P2 - True copy of explanation dated 19.7.1996 submitted by the first respondent.
Ext.P3 - True copy of inquiry report
Ext.P4 - True copy of penalty order NoJ/T Misc 96/URL/UN dated 14.11.96
Ext.P5 - True copy of order No J/T Misc 96/URL/UN dated 27.6.1997 from ADRM
Ext.P6 - True copy of order No P(A)94/Misc./204 dated 26.2.1998 from Chief Operations Manager, Chennai
Ext.P7 - True copy of reply statement filed before CAT in O.A 835/1999
Ext.P8 - True copy of CAT order dated 23.11.2001 in O.A No 835/1999
Ext.P9 -True copy of Railway Board Circular No 82/1997 dated 4.8.1997

[TRUE COPY]